UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

1 BURR ROAD OPERATING COMPANY II, LLC d/b/a WESTPORT HEALTH CARE CENTER Employer

and

Case 01-RC-114507

NEW ENGLAND HEALTH CARE EMPLOYEES UNION, DISTRICT 1199, SERVICE EMPLOYEES INTERNATIONAL UNION Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review. The Employer's request for a stay of election is denied as moot.

MARK GASTON PEARCE, CHAIRMAN

PHILIP A. MISCIMARRA, MEMBER

NANCY SCHIFFER, MEMBER

Dated, Washington, D.C., February 12, 2014

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Member Miscimarra agrees with his colleagues that the Employer failed to prove that the charge nurses exercise independent judgment when directing the CNAs. Consequently, Member Miscimarra finds it unnecessary to pass on whether the Employer demonstrated that the charge nurses are held accountable for their direction of the CNAs. Additionally, Member Miscimarra finds that the record fails to show that charge nurses exercise independent judgment when orally warning and/or counseling CNAs, and consequently he finds it unnecessary to pass on whether the Employer otherwise failed to establish disciplinary authority under Sec. 2(11) of the Act.

¹ The Regional Director rejected the Employer's argument that its charge nurses are supervisors because they responsibly direct certified nursing assistants (CNAs). In making that finding, the Regional Director declined to rely on evidence of four verbal warnings the Employer issued to charge nurses, assertedly based on the conduct of subordinate CNAs, because those disciplinary actions were taken after the Union demanded recognition and filed the representation petition in this case. We do not pass on the weight, if any, to be given those warnings because, even if considered, they do not show that the charge nurses are held accountable for the CNAs' performance. See *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). Nor does the record establish that the charge nurses exercise independent judgment in directing the CNAs. See *Croft Metals*, 348 NLRB 717, 722 (2006).